

1 Q Okay. And on that occasion where you
2 calculated lost wages in the personal injury case, you
3 did not value any physical property in that case,
4 right?

5 A It was a lost wages calculation and,
6 right, an evaluation of property was not involved.

7 Q Okay. And the Public Service Commission
8 case that you told me about in the deposition where
9 you represented the Joe Wheeler Electric Membership
10 Corporation, that was on a question involving the
11 status of invested monies but did not actually involve
12 a valuation analysis, right?

13 A I didn't have to offer a full valuation
14 analysis as to the -- on the assets of the -- of the
15 gas company. However, that was an underlying issue
16 given that what was at question was -- was the --
17 whether or not it was a prudent investment for that
18 electric membership cooperative to be invested in that
19 gas company and whether or not its investment was
20 exceeding the value of the -- or could -- whether it
21 was exceeding the value of that investment and whether
22 or not it could become a viable entity, and so that

1 was, you know, relatedly a -- a -- an issue in the
2 case.

3 Q Can I direct your attention to page 11 of
4 your deposition, not the excerpts. Page 11, line 15,
5 there's a question. This follows a question about the
6 Joe Wheeler EMC. It says, (reading) "Okay. And so
7 you were analyzing. Did you perform a valuation
8 analysis on this case. Answer. Didn't actually
9 perform a valuation analysis at that point. No" (end
10 reading). Did I read that correctly?

11 A You did and I hope that's consistent with
12 what I just said, that I didn't perform a valuation,
13 but that was -- that was a related issue given what
14 was being discussed there.

15 Q Okay. But you -- your answer is correct
16 in this deposition, didn't actually perform a
17 valuation analysis --

18 A That's correct.

19 Q Okay. Now you've never given any
20 testimony previously in any case involving utility
21 pole attachments, right?

22 A That's correct.

1 Q And as of the time you gave your
2 deposition on March 17th, you couldn't identify any
3 FCC decision or rulings specifically that involved
4 utility poles that you had read, right?

5 A I think at the time of mo deposition, that
6 was the case, and that's what I said.

7 Q Okay. Now you have consulted for electric
8 cooperatives, but that experience was in regard to
9 cost of service studies, right?

10 A Primarily cost of service studies, right,
11 traditional rate making and that sort of thing.

12 Q And I believe you said your work for the
13 coops wasn't a business valuation or asset valuation,
14 right?

15 A It was not a -- a full valuation or I was
16 not asked to give an opinion as to the value of their
17 -- their business.

18 Q And on those projects, you looked at the
19 historical costs of the utility, right?

20 A Again, they were in the -- in the context,
21 for the most part, if not exclusively, for the purpose
22 of -- of cost of service study and rate making

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1 purposes, and -- and done in that context, some for
2 pole attachments at the directive of the client or --
3 and/or my supervisor. At the time, I was a staff
4 accountant.

5 Q Okay. But the question was you looked at
6 the historical costs of the utility in those cost of
7 service projects for the cooperatives, right?

8 A Given the context of the engagement --

9 Q I'm sorry. Is the answer --

10 A -- described, that's correct.

11 Q Okay. That's what I'm trying to
12 establish. Now apart from the cost of service
13 studies, you testified at y our deposition that you
14 have never worked on a project before this case where
15 the valuation analysis was to value part of a physical
16 tangible asset that is one component of an entity's
17 larger property, right?

18 MR. ESTES: Your Honor, if he's going to
19 impeach using the deposition, it's proper that he ask
20 a question that actually asks for a memory instead of
21 going straight at the deposition. If he's going to
22 reference the deposition, the witness has a right to

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1 see the line and page of that deposition that he's
2 talking about.

3 JUDGE SIPPEL: That's correct. I'll
4 sustain the objection.

5 MR. COOK: Okay.

6 BY MR. COOK:

7 Q Apart from the cost of service studies,
8 you have never worked on a project before this case
9 where the valuation analysis was to value part of a
10 physical tangible asset that is one component of an
11 entity's larger property, right?

12 A I think that's accurate.

13 Q Okay. And you haven't worked on any
14 previous projects where you applied the concept of
15 replacement costs to utility poles, right?

16 A Not to utility poles, though. However, in
17 the context of performing valuation that I have done
18 previously, that's one of the three accepted methods
19 for determining fair market value and a valuation
20 analyst should consider all three in performing his
21 work, so it is something I've certainly looked at in
22 other contexts.

1 Q But my question was not your longer
2 explanation but rather you have never previously
3 worked on projects where you applied the concept of
4 replacement cost to utility poles, right?

5 MR. ESTES: Objection, Your Honor. Asked
6 and answered. He answerer the question the first time
7 very clearly.

8 JUDGE SIPPEL: I'll sustain the objection.

9 MR. COOK: Okay.

10 BY MR. COOK:

11 Q In this case, you didn't actually prepare
12 any Gulf Power pole attachment fee calculations of
13 your own, right?

14 A I did not do a separate calculation.

15 Q Okay. And you didn't make any rate
16 calculations yourself in this case, right?

17 A I did not.

18 Q And you didn't speak with Gulf Power to
19 verify the inputs to its calculations, right?

20 A I -- I -- I don't think that -- no, I
21 didn't verify the inputs to the -- to the
22 calculations, no.

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1 Q And in fact, prior to the time of your
2 deposition, which was March 17th of this year, you
3 never talked to anyone at Gulf Power, right?

4 A Prior to my deposition, that was true.

5 Q Okay. Now, Mr. Spain, you only became
6 involved in this case in February 2006, right?

7 A I think that's when I was formally engaged
8 on this project, but I think it was earlier in 2006
9 than that that I was first contacted.

10 Q When was that?

11 A I'm sorry. The exact date I don't
12 remember, but it was before I was formally engaged.

13 Q Was it late January of 2006?

14 A I believe it was January. I would have a
15 hard time characterizing when in January, but that
16 sounds correct that it was in January.

17 Q Okay. And when you were retained, your
18 task, as defined by Gulf Power's counsel, was to offer
19 an opinion as it related to determining the fair
20 market value of pole attachments, right?

21 A To offer an opinion as to the appropriate
22 method for determining fair market value of elevated

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1 corridor -- elevated communication corridor.

2 Q Elevated communication corridor meaning
3 Gulf's entire network of distribution utility poles?

4 A The -- the space in which -- on a pole --
5 in which an attacher could attach communication lines
6 running through Gulf Power's system.

7 Q Running through the whole system?

8 A If that was where the attachments were
9 needed, then it could e within the whole system --

10 Q I'm just trying --

11 A -- but I think it was just wherever the
12 attachments might be needed. I'm sorry.

13 JUDGE SIPPEL: No, no --

14 MR. COOK: I don't want to talk over you.

15 JUDGE SIPPEL: You did. Well, you did.
16 You interrupted him so only one at a time.

17 BY MR. COOK:

18 Q When you say elevated corridor, I'm trying
19 to understand, you're not talking about one pole,
20 right? You're talking about a corridor through power,
21 the Gulf pole network?

22 A Right. Because I -- I -- yes, I don't

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1 know that an attacher would want to attach to one
2 pole, so I assumed that they would attach to many
3 poles, and if that's how that should be characterized,
4 then that's the case.

5 Q Well, I'm not doing the testifying --

6 A Okay.

7 Q I'm trying to understand, and I think I do
8 now --

9 A Okay.

10 Q -- based on your answers what you mean by
11 corridor.

12 A Okay.

13 Q And you didn't do any analysis in this
14 case that involved any other standards of value other
15 than fair market value, right?

16 A Right. I -- I've looked at this case with
17 fair market value as the appropriate standard of
18 value.

19 Q And you didn't question the assumption or
20 the application of the fair market value standard to
21 utility pole attachments, did you?

22 A You know, as I did my research, I was --

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1 I -- I didn't set out to -- to necessarily to question
2 that. However, you know, I -- I analyze things as I
3 read them, and I try not to step into the realm of --
4 of practicing law, so I relied on counsel for their
5 interpretation of the law. And -- and that seemed
6 consistent with -- with some of the things I was
7 reading so I pursued --

8 Q So the answer is no?

9 A -- I pursued fair market value as the
10 appropriate standard of value there.

11 Q So the answer is no, you did not question
12 the application of that standard? Is that right?

13 A Did I formally question it?

14 Q Exactly. Did you --

15 A No, but as I was -- as I was reading what
16 I read, I did so with an analytical mind.

17 Q Okay. And when you were first retained in
18 February of this year, you were given a three-page
19 calculation showing a Gulf Power pole attachment rate
20 of about \$54.00, right?

21 MR. ESTES: Your Honor, I'm going to
22 object -- mischaracterizes prior testimony. The

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1 witness just said he was retained in January of this
2 year. I don't know why Mr. Cook insists on saying
3 February because that's what's typed on the paper.

4 MR. COOK: Excuse me.

5 JUDGE SIPPEL: I'm going to sustain the
6 objection. Thank you.

7 BY MR. COOK:

8 Q When you were first retained in January of
9 this year, you were given a three-page calculation
10 showing a Gulf Power pole attachment rate of about
11 \$54.00, right?

12 A Yes. And again, if I can't remember the
13 date, I apologize, but yes, very early on in my
14 dealings with the attorneys with Balch, I was
15 presented with that calculation.

16 MR. COOK: Your Honor, may I approach the
17 witness?

18 JUDGE SIPPEL: For what purpose?

19 MR. COOK: For showing him a copy of the
20 three-page calculation which my last question and
21 future questions will relate to.

22 JUDGE SIPPEL: Is it in evidence?

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1 MR. COOK: It is actually. Three of the
2 pages are in evidence under another ruling of Your
3 Honor's, and the remaining cover page is a page from
4 Eric Langley to a supervisor of the witness saying
5 attached is an example of the information I referenced
6 in our phone conversation.

7 JUDGE SIPPEL: Well, we don't need -- we
8 don't need counsel's letter. Why don't you just take
9 counsel's letter off and put the document in front of
10 the witness.

11 MR. COOK: Okay. Sure.

12 JUDGE SIPPEL: And I'd like a copy. And
13 then tell us what --

14 MR. COOK: Absolutely. I'm going to
15 proceed to have some questions about it.

16 JUDGE SIPPEL: I mean do you have it tied
17 in with a specific exhibit and page numbers so that --

18 MR. COOK: Let's see. I can do that for
19 you.

20 JUDGE SIPPEL: Why don't you give it to
21 the witness first so that he can look at this while
22 we're --

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1 MR. COOK: Okay.

2 THE WITNESS: Thank you.

3 MR. COOK: Mr. Cook, while you're looking,
4 if you'd like us to put it on the screen, just let us
5 know. We'd be happy to do that -- on the screen?

6 JUDGE SIPPEL: I would. Do you have any
7 objection to it going up on the screen, Mr. Cook?

8 MR. COOK: No, the only thing that I don't
9 know is if I can -- this is what he's going to show us
10 -- okay. No, I do not.

11 JUDGE SIPPEL: You do not what?

12 MR. COOK: In answer to your question --

13 JUDGE SIPPEL: You have no objection --

14 MR. COOK: -- have any objection --

15 MR. ESTES: do you have an Exhibit number,
16 a page.

17 MR. COOK: I have an Exhibit number and
18 the numbers appear to be slightly different, Your
19 Honor. The exhibit number that I have is 52 of Gulf
20 Power, page one, and it says 2005 replacement cost for
21 pole attachments based on 2004 data. And the three-
22 page exhibit or proposed exhibit that I have to show

1 the witness is what was produced in response to Your
2 Honor's order that both sides share with the other
3 side documents provided to the expert witness, so I
4 think this is -- is three-pages that are almost
5 identical to what you see in Exhibit 52, and with the
6 Honor -- with Your Honor's indulgence, I will ask the
7 witness if there was a change and if he knows why
8 there was a change.

9 JUDGE SIPPEL: Well, Ms. Corbyn has it up
10 on the screen now, so I'm assuming that it was found
11 sometime -- someplace around the Exhibit 52 area.

12 MR. COOK: Right. Your Honor, this was
13 provided to us after the exhibits -- I believe -- I'm
14 not sure about that -- when -- when did we get this?
15 We got this in April after the exhibits were filed in
16 response to Your Honor's --

17 JUDGE SIPPEL: I don't need the history.
18 All that I need to know is that what I'm looking at on
19 the screen is -- is in evidence.

20 MR. COOK: Yes.

21 JUDGE SIPPEL: But that's all I need to
22 know.

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1 MR. COOK: What's on the screen is in
2 evidence.

3 JUDGE SIPPEL: That's all I need to know.

4 MR. COOK: Yes -- yes, Your Honor.

5 JUDGE SIPPEL: Okay. And it's something
6 having to do with Gulf Exhibit 52, right, which is
7 calculations?

8 MR. COOK: Right. Right.

9 JUDGE SIPPEL: Let's go on with the
10 witness.

11 MR. COOK: Okay. Let's see. Did I
12 provide you a courtesy copy --

13 JUDGE SIPPEL: I did not, but I have it
14 here. I'm on the screen, so I'm okay.

15 MR. COOK: Okay. No, but, Your Honor,
16 this -- that's my point is the courtesy copy is -- has
17 slightly different numbers than what's up --

18 JUDGE SIPPEL: Thank you. Okay. Good
19 point.

20 MR. ESTES: Do you have one for me --

21 MR. COOK: Yes, I do --

22 BY MR. COOK:

1 Q Okay. Mr. Spain, taking a look at the
2 physical document in front of you, this is marked RS-
3 002, RS-003, and RS-004, provided to us by your
4 counsel as documents that they gave to you, and I
5 wanted to ask is this the three-page document to which
6 you said yes in response to the last question about
7 when you were first retained, you were given a three-
8 page calculation showing a Gulf Power pole attachment
9 rate of about \$54.00?

10 A I think it is.

11 Q Okay. So this -- this calculation that
12 you were given, do you recall when you got this?

13 A Again, the date, no. But it was, you
14 know, very early in 2006.

15 Q Okay. Very good. So very early in 2006,
16 you were asked by Gulf counsel to form an opinion as
17 to how to determine the fair market value of pole
18 attachments and then at the same time, you were given
19 a document that showed how Gulf Power intended to
20 value pole attachments, right?

21 A Again, I don't know if what was first
22 discussed -- if there was first a phone call that

1 essentially laid out the parameters of our engagement
2 or if that was done at the same time we received this
3 document. I don't -- I -- I can't remember, and I
4 apologize, but it would have been close in time.

5 Q Okay.

6 A You know, they would have approximated one
7 another anyway.

8 Q All right. And after you were retained
9 and got a copy of these pages, of Gulf's replacement
10 costs calculations, you looked at a book published by
11 the Public Utilities Reports organization called
12 Valuing an Electric Utility, right?

13 A At some point probably in -- in latter
14 February I looked at that.

15 Q And from your review of that PUR book,
16 I'll call it, the focus of that book was on valuing an
17 entire electric utility, right?

18 A That's correct.

19 Q Okay. To the extent that it discusses
20 replacement costs, it makes clear that replacement
21 cost is based on the substitution of the existing
22 property, right?

1 A I -- I think that's what they discuss and,
2 again, I'm -- that's just based on recollection, but
3 that sounds familiar, yes.

4 Q Okay. And doesn't the PUR treatise on
5 valuing utilities also note that the use of
6 replacement and reproduction costs have been found to
7 be impractical, controversial, extremely expensive,
8 and subject to great differences of opinion of value?

9 A As it relates to valuing an entire utility
10 or a utility in total, I think that was their
11 conclusion.

12 Q Okay. Do you -- do you remember that the
13 PUR treatise also says that the Federal Energy
14 Regulatory Commission has excluded reproduction costs
15 from the record when it was reviewing some pipeline
16 cost proceedings?

17 A I don't recall seeing that.

18 Q Okay. As far as the written materials
19 you've looked at that are related to this case, you
20 have not looked at any of the interrogatory answers,
21 correct?

22 A I don't think I have.

1 Q Okay. And the only deposition that you
2 read before writing you expert summary report in this
3 case was that of Ms. Terry Davis, right?

4 A I think that's true.

5 Q And Ms. Davis is the person at Gulf Power
6 who formulated Gulf's replacement costs, right?

7 A I believe that's correct.

8 Q And to your knowledge, Ms. Davis is the
9 person who wrote the three-page calculation that we
10 just looked at a moment ago, right?

11 A To the best of my knowledge, that's the
12 case.

13 Q Okay. Now you said that you have read, at
14 some point, the Alabama Power case, right --

15 A Yes --

16 Q -- by the Eleventh Circuit?

17 A Yes.

18 Q Okay. But you read it after Gulf's
19 counsel instructed to use the fair market value
20 standard on pole attachments, right?

21 A That -- that -- well, yes, I think that's
22 true.

1 Q Okay. And you read it after Gulf's
2 counsel had transmitted the three-page replacement
3 cost calculation we just looked at, right?

4 A Let's see now. I -- I apologize. I just
5 wanted to give you the best of my recollection. But,
6 yes, I -- I think that's the case.

7 Q Okay. And when you read the Alabama Power
8 decision, you noted that some of the court's
9 requirements were difficult for you to reconcile with
10 what you called accepted valuation of principals,
11 right?

12 A Based on my experience as a valuation
13 analyst and as a CPA, it was, yes, difficult for me to
14 reconcile some of what I read with what -- with what
15 I understand to be accepted within valuation
16 principals.

17 Q Okay. And in particular, you noted that
18 Alabama Power had a two-prong test? Is that right?

19 A I understand that, yes, in the -- in the
20 case there is -- certainly one interpretation of that
21 case is that there is a test in that case.

22 Q Okay. And the first prong was proof of

1 something called full capacity? Is that your
2 recollection?

3 A I recall that being in there.

4 Q And the second was a showing either of a
5 buyer waiting in the wings or a higher valued use by
6 Gulf Power? Is that your recollection?

7 A Yes.

8 Q And you have, however, very limited
9 knowledge about the capacity of Gulf Power's utility
10 poles, right?

11 A I've not studied the capacity of their
12 poles.

13 Q Okay. And you have not been retained by
14 Gulf Power to offer an opinion regarding pole
15 capacity, right?

16 A That's correct.

17 Q You have said that's not your area, right?

18 A That's correct.

19 Q Okay. And you haven't seen any materials
20 prepared by the Osmose company that pertained to this
21 case, right?

22 MR. ESTES: Your Honor, Mr. Spain is not

1 offered as an expert on the crowded nature of Gulf
2 Power's poles, and these questions are wholly
3 irrelevant to the direct testimony or any voir dire of
4 what he is offered for.

5 MR. COOK: Your Honor, I'm just evaluating
6 the scope of the witness' knowledge as it relates to
7 his conclusion that reproduction costs are appropriate
8 given the Alabama Power standard of this case.

9 JUDGE SIPPEL: Yes. All right. He said
10 that he doesn't have an opinion, and he really doesn't
11 have any -- certainly he doesn't have any expertise
12 knowledge of what -- of pole capacity, so I mean
13 that's established, so I would -- I would ask you to
14 please move on.

15 MR. COOK: Okay. Very good, Your Honor.
16 I will do that.

17 JUDGE SIPPEL: It's a given now.

18 MR. COOK: Okay.

19 BY MR. COOK:

20 Q Now --

21 JUDGE SIPPEL: Before you do that --

22 MR. COOK: Yes, Your Honor.

1 JUDGE SIPPEL: I'm sorry. I've
2 interrupted you once. The numbers on this document --
3 three-page document which obviously comports with but
4 is not precisely with what is up on the screen as Gulf
5 Power Exhibit 52, pages, I guess, one, two and three,
6 the numbers are close but they're not exactly the
7 same, and you pointed this out. My question is -- is
8 why is there that difference, and is it going to be
9 necessary to have this document marked and introduced
10 into evidence, or can we rely on -- you know, because
11 of the closeness in the numbers, can we -- can we rely
12 on what's in Exhibit 52?

13 MR. COOK: May I ask the witness that
14 exact question. Do you have any knowledge of why
15 there's a difference in the numbers between the three-
16 page calculation and the one that's on the screen?

17 THE WITNESS: I didn't prepare these. I
18 don't know why -- what the difference is --

19 MR. COOK: You don't know why. We don't
20 know why there's a difference. I can only speculate
21 it was an earlier version of what is Exhibit 52, so I
22 don't think we need to have this in evidence, but I am

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1 happy to move the three pages into evidence, and I
2 think that's probably better in the sense of having a
3 complete record.

4 JUDGE SIPPEL: Do you have a position on
5 this, counsel?

6 MR. COOK: We don't have a position with
7 respect to the document coming into evidence. It was
8 produced. It relates to a document that is in
9 evidence. It can be received into evidence. We can
10 have counsel explain why there's a difference. The
11 witness who would have knowledge about that's left the
12 stand already, and she wasn't questioned about it, so
13 it would be a counsel's representation, but we're
14 happy to do that if the court would like that
15 information.

16 JUDGE SIPPEL: I think it would be -- it
17 would be -- if you can give a quick explanation as to
18 why the variances, I think -- I don't know how you can
19 question him on these numbers that are different from
20 Exhibit 52 numbers and not put this thing into
21 evidence. But let's see what counsel's explanation
22 is. Maybe -- maybe there is an answer to this.

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1 MR. COOK: I'll defer to Mr. Langley on
2 this. The larger point here, however, I think it is,
3 again, we're beyond the scope, because the witness has
4 already testified that he didn't affirm any of the
5 numbers, that he's speaking about a methodology, and
6 here we are down in the numbers in the weeds in an
7 area where he didn't go. But Mr. Langley can explain
8 the differences in the documents. They had their
9 chance to cross examine Ms. Davis on this, and they
10 didn't.

11 JUDGE SIPPEL: Well, I don't -- all right.
12 Your point is all well taken, and I'm trying to climb
13 out of the weeds. Mr. Langley, can you help us?

14 MR. LANGLEY: Yes, I can. Terry Davis
15 realized that there was a small error in her original
16 calculations. The original calculations were the one
17 that Mr. Seiver had the poster on back in November of
18 2005, and the calculations that are Exhibit 52 are the
19 revised calculations which were submitted as part of
20 our case in chief on March 31st.

21 JUDGE SIPPEL: So, the -- the -- the three
22 pages that he's looking at now is the first version --

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